



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: James McKeown, Jr. - Claim for Annual Leave
Payment - Barring Act

File: B-235887

Date: August 30, 1990

DIGEST

A federal employee who retired in 1987, seeks reimbursement for annual leave not credited him in 1968 when he transferred from the Panama Canal Company to the Atomic Energy Commission. A claim for undercredit of annual leave is a continuing claim and, if not credited during the employee's period of service, eventually merges into a claim for payment of its lump-sum value upon separation from federal service. The employee was separated by reduction in force on September 28, 1981, and received a lump-sum payment for annual leave. Thus, any claim he had for a prior undercredit of annual leave merged into a claim for a lump-sum payment that accrued on that date. Since the claim was not received here until June 16, 1989, more than 6 years after it accrued, the claim is barred from consideration under 31 U.S.C. § 3702(b) (1988) and may not be paid.

DECISION

This decision is in response to a request from Fernando Manfredo, Administrator, Panama Canal Commission (PCC). It concerns the claim of a former employee of the PCC to be paid for annual leave lost when he transferred to the Atomic Energy Commission (AEC). We conclude that the claim may not be paid for the following reasons.

BACKGROUND

Mr. James McKeown, Jr., was an employee of the PCC. On February 1, 1968, he transferred to the AEC for duty in Berkeley, California. He had 460 hours of accumulated and accrued annual leave to his credit at transfer. The AEC authorized the transfer of only 240 of those hours. Through a series of agency reorganizations and transfers of function, Mr. McKeown was successively employed by the AEC, the Energy Research Development Administration (ERDA), and the Department of Energy (DOE) at a number of different locations. According to Mr. McKeown, he was employed by DOE from October 1, 1977, until June 1987, when he retired. Following his retirement,

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he made claim to the PCC for the 220 hours of annual leave lost when he transferred to the AEC, contending that he was entitled to be paid its value on retirement in June 1987.

We secured a report from the DOE in order to confirm Mr. McKeown's employment history and annual leave accrual. That report clearly established that Mr. McKeown was continuously employed with the AEC, ERDA and DOE from October 1, 1967, only until September 28, 1981. On that latter date, his service with DOE was terminated incident to a reduction in force. The form SF-50 "Notification of Personnel Action" issued to him at that time showed that he was entitled to a lump-sum payment for 256 hours of annual leave, with the notation that if he became reemployed prior to November 13, 1981, he would be required to refund the value of the unexpired annual leave. In fact, he was not reemployed until February 7, 1982, when he was reinstated by DOE for duty in Clearwater, Florida. He remained employed by DOE from February 7, 1982, until he retired in June 1987, without a further break in service.

OPINION

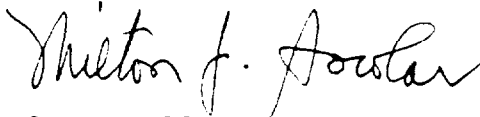
Section 3702(b) of title 31, United States Code, provides that, except as otherwise provided by statute, a claim against the government must be received by the Comptroller General within 6 years after it accrues or be barred from consideration on its merits. This includes claims based on annual leave.

Under 5 U.S.C. § 5551(a) (1988), an employee is entitled to a lump-sum payment for unused annual leave upon the effective date of separation. Therefore, any claim for prior under-credit of annual leave necessarily merges into a claim for its lump-sum value at separation. If payment is not made at separation, the employee's right to file a claim accrues at that time and is subject to the limitations period prescribed by statute. B-182014, Jan. 30, 1975; affirmed upon reconsideration, Sept. 29, 1975; B-166696, May 27, 1969.^{1/}

On the record before us, Mr. McKeown's claim for annual leave lost in 1968 accrued not later than September 28, 1981, when

^{1/} Prior to July 2, 1975, the period prescribed was 10 years. The period was reduced to 6 years effective that date by title VIII of Public Law 93-604, January 2, 1975, 88 Stat. 1959, 1965.

he was separated and a lump-sum leave payment was made to him. Since his claim for a prior undercredit of annual leave merged into a claim for an additional lump-sum leave payment, it had to be received here not later than September 28, 1987, in order to be considered on its merits. Since the earliest correspondence concerning this matter was received here on June 16, 1989, Mr. McKeown's claim is barred from consideration and may not be paid.

A handwritten signature in cursive script, reading "Milton F. Fowler".

Acting Comptroller General
of the United States